

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re DAVID MICHAEL LECLAIRE,

Plaintiff.

Case No. 22-cv-10726

Hon. George Caram Steeh

OPINION AND ORDER SUMMARILY DISMISSING THE COMPLAINT

Plaintiff David Michael LeClaire, a parolee under the supervision of the Michigan Department of Correction's Houghton area Parole and Probation office, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. The plaintiff, who requires the use of a wheelchair due to the amputation of his right leg and hip, alleged violations of his rights under the Eighth and Fourteenth Amendments and the Americans with Disabilities Act (ADA), when he was improperly housed and did not receive medically necessary accommodations and when he received deliberately indifferent medical care after an accidental injury.

After screening the complaint, as required by the Prisoner Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), this Court dismissed all defendants named in the complaint because the plaintiff failed to state a claim against them. The complaint was not dismissed in full because the plaintiff's allegation that he was not provided appropriate

medical care following his accident was potentially viable. Accordingly, the plaintiff was ordered to amend his complaint to name the defendants responsible for the alleged deliberate indifference. The plaintiff was given 60 days to amend his complaint. *See LeClaire v. Par.*, No. 2:22-CV-10726, 2022 WL 2119540 (E.D. Mich. June 13, 2022).

The Court granted the plaintiff's request to extend his deadline to amend the complaint (ECF No. 10), and later, granted his motion to appoint counsel. (ECF No. 13.) The latter order stayed the case for sixty days while the Court attempted to obtain *pro bono* counsel for the plaintiff. (*Id.* at PageID.37). The order cautioned the plaintiff that if counsel could not be obtained, the stay would be lifted and the plaintiff would proceed *pro se*. (*Id.*).

On August 15, 2023, the Court lifted the stay and denied the plaintiff's motion for the appointment of counsel, because the Court was unable to find a *pro bono* attorney who would agree to represent the plaintiff. The plaintiff was given ninety days from the date of the order to file an amended complaint to name the defendants responsible for the denial of healthcare following his accident while in MDOC custody. (ECF No. 14). To date, the plaintiff has not filed an amended complaint although being given several extensions of time to do so.

This Court may dismiss a civil action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b) and Rule 41.2 of the Local Rules of the Eastern District of Michigan. *Mulbah v. Detroit Board of Education*, 261 F.3d 586, 589 (6th Cir. 2001). A federal court can dismiss a civil rights case for want of prosecution if a prisoner or parolee fails to comply with a court order and file an amended complaint within the time allowed. *See Gee v. Pacheco*, 495 F. App'x 942, 943–44 (10th Cir. 2012); *Verdugo v. Cohen*, 430 F. App'x 592, 593 (9th Cir. 2011); *Hall v. White*, 817 F.2d 756 (Table); 1987 WL 37304, 817 F.2d 756 (6th Cir. May 8, 1987); *Trevino v. Kelly*, 245 F. Supp. 3d 935, 946 (E.D. Mich. 2017). Plaintiff failed to comply with this Court's order to file an amended complaint by the deadline imposed in the Court's last order. Accordingly, the case is dismissed without prejudice.¹

IT IS HEREBY ORDERED that the complaint is DISMISSED
WITHOUT PREJUDICE.

s/George Caram Steeh
HON. GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: January 17, 2024

¹ **AError! Main Document Only.** district court has the option of the less drastic sanction of dismissing a case without prejudice for want of prosecution under Fed.R.Civ.P. 41(b). See e.g. *White v. City of Grand Rapids*, 34 F. App'x 210, 211 (6th Cir. 2002); *Hill v. General Motors Corp*, 897 F.2d 529 (Table); 1990 WL 25065, * 3, n. 2 (6th Cir. March 8, 1990). Because the plaintiff is acting *pro se*, the Court chooses to dismiss the case without prejudice.

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 17, 2024, by electronic and/or ordinary mail and also on David Michael LeClaire #551505, 416 Bowling Ave., Baraga, MI 49908.

s/LaShawn Saulsberry
Deputy Clerk